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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,052	04/16/2004	William Ashley Gouthro	0503.ash	7227
32707	7590	03/21/2006	EXAMINER	
SVEN W. HANSON PO BOX 357429 GAINSVILLE, FL 32635-7429			LEWIN, ALLANA	
			ART UNIT	PAPER NUMBER
			3764	
DATE MAILED: 03/21/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/825,052

Applicant(s)

GOUTHRO, WILLIAM ASHLEY

Examiner

Allana Lewin

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 and 12 is/are allowed.
- 6) ☐ Claim(s) 1-4, 6, 8 and 10 is/are rejected.
- 7) ☐ Claim(s) 5, 7 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-4, 6, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Estwanik (US Pat. No. 6,013,044) in view of Klotz (US Pat. No. 5,358,471).
3. Estwanik substantially discloses the claimed invention comprising a conformable grip configured to accept a human hand formed in a first having medial and lateral sides (note Figures 5 and 6), a flat elongated flexible medial strap (see proximate lead line 18 and column 3, lines 10-16) with respective strap end (see proximate lead line 22), a flat elongated flexible lateral strap (see proximate lead line 26 and column 3, lines 17-21) with respective strap end (see proximate lead line 30), and a flexible clench strap within the grip (see proximate lead line 48) extending from the medial side to the lateral side as can be seen in the side views of Figures 5 and 6. Furthermore, Estwanik teaches hook-and-loop fasteners at the ends of the medial and lateral straps that provide a means for connecting a resistance device (see proximate lead lines 24, 32, 46 and note column 3, lines 30-42 as well as column 4, lines 10-15). Securely attaching the strap ends to the wrist portion would apply resistance to the outside of the user's fist as the user attempts to stretch the outside of the fist away from the wrist.
4. Estwanik fails to disclose top and bottom cross straps distanced from the grip and extending between the medial and lateral straps, but only discloses a single cross strap (see proximate lead line 34).

5. Klotz discloses a wrist brace/stabilization device (note Figures 1-3) comprising a conformable grip configured to accept a human hand formed in a fist, a clench strap, medial and lateral straps, as well as a forearm strap (see proximate lead line 68) which comprehends Applicant's 'top cross strap' and a wrist strap (see proximate lead line 74) which comprehends Applicant's 'bottom cross strap'.
6. Based on the teaching of Klotz, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized top and bottom cross straps in the Estwanik device rather than a single cross strap as this modification would reduce the amount of material required in making the device, as well as provide greater adjustability to the device making it more configurable for various users.
7. Regarding claims 2 and 3, the Estwanik device comprises a wrist compression strap (see proximate lead line 34) and a wrist portion (see proximate lead line 16) which comprehend applicant's 'resistance device' that comprises an elastic member, as the wrist compression strap is generally flexible/elastic to allow for some movement of the hand and wrist, but inherently provides resistance so as to function as a stabilizer and to reduce relative movement of the hand and wrist during various activities (column 1, lines 49-67).
8. Regarding claim 4, the length of the top cross strap, between the medial and lateral straps, would be the width of the average forearm. The width of the average forearm would be approximately 2.25 inches. The length of the top cross strap of both Estwanik and Klotz would therefore comprehend the claim language. However, to any

Art Unit: 3764

extent that it is felt that the length of the top cross strap is not 2.25 inches, it would have been obvious for the top cross strap of Estwanik modified supra to have a length of 2.25 inches so as to accommodate most users.

9. Regarding claim 6, it is still unclear which distal point the Applicant refers to. As best understood by the examiner, the grip has a most distal point for receiving the knuckles of a user's fist (note Figure 4) and it would appear that a proximal portion of the top cross strap of Estwanik modified supra would be approximately 6.5 inches from the distal most portion of the device. However, to any extent that it is felt that the top cross strap is not distanced 6.5 inches from the most distal point of the device, it would have been obvious for the top cross strap to be distanced 6.5 inches from this most distal point so as to render the device appropriate for users with various hand sizes.

10. Regarding claim 8, Estwanik does not disclose what material the lateral and medial straps are formed from, however it appears as though these straps and the main body (see proximate lead line 12) are formed of the same material. Estwanik teaches that this main body may be formed of any suitable flexible material, including textile material (column 2, lines 63-67 to column 3, lines 1-2), and additionally it is known and common in the art to use woven fabric material. Therefore, it would appear that Estwanik would inherently anticipate this limitation. However, to any extent that it is felt that the medial and lateral straps are not made of woven fabric, it would have been obvious to use a conventional and well known material such as woven fabric in order to achieve the desired flexibility and to provide comfort for the user. Furthermore, Estwanik does not disclose the width of the medial and lateral straps, but it would be

obvious for the straps to have a width of two inches so as to accommodate users with larger hands and wrists.

11. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Givler et al. (US Pat. No. 6,945,945) in view of Estwanik (US Pat. No. 6,013,044).

12. Givler substantially discloses the claimed invention comprising a conformable grip configured to accept a human hand formed in a fist (note Figure 3), flat elongated flexible medial and lateral straps extending from the grip and having proximal ends (see proximate lead lines 20 and 20'), a hand piece (see proximate lead line 28) which comprehends Applicant's 'clench strap', a means for applying resistance force to the proximal ends of the straps via a harness (see proximate lead line 10) that includes adjustment straps and buckles (see proximate lead lines 16 and 18) which would allow for a resistance force at the proximal ends of the medial and lateral straps, and a means for applying a portion of the resistance force to the middle of the user's forearm (see proximate lead lines 22 and 26) as these two members would result in a resistance force applied in the middle of the forearm when the user is gripping and using the device.

13. Givler fails to teach the hand piece or clench strap as being flexible, but does disclose the hand piece as being contoured and accommodating for a user's hand.

14. Estwanik discloses a stabilization device comprising a conformable grip, medial and lateral straps, and a flexible clench strap (see proximate lead line 48) within the grip and extending between the straps.

15. Based on the teaching of Estwanik, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized a flexible clench strap in the Givler device in order to make the hand piece/clench strap more contoured and therefore accommodating for the user's hand.

***Allowable Subject Matter***

16. Claims 5, 7, and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

17. Claims 11 and 12 are allowed.

***Response to Arguments***

18. Applicant's arguments filed March 2<sup>nd</sup>, 2006 have been fully considered but they are not persuasive. The prior art cited in the above rejections meets the limitations presented by Applicant in the amended claims.

19. Regarding claim 1, Applicant's broad recitation of a 'means for connecting a resistance device' is shown by Estwanik, as the wrist strap, which in conjunction with the wrist compression strap has the inherent function and purpose of providing resistance in order to maintain stability for the user's wrist, is provided with hook-and-loop fasteners in order to engage and connect the straps. The resistance device of Estwanik is the means of securing the ends of the medial and lateral straps to the grip. This would resist any movement of the outside of the user's fist away from the ends of the medial

and lateral straps. Just as if Applicant's medial and lateral strap ends were fixed in place that would create a resistance. Furthermore, the clench strap extends within the grip across the device and therefore goes *from* the medial side *to* the lateral side. It is not clear how much weight can be given to Applicant's remarks that the clench strap "extends fully" from one side of the grip to the other because such is not claimed. What is claimed is the clench strap is 'extending from the medial side to the lateral side'. Estwanik clearly shows in figure 3 the clench strap (48) extending from the medial side of the grip to the lateral side of the grip.

Additionally, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Estwanik and Klotz are both bracing/stabilization devices and the introduction of the Klotz reference is merely to provide a general teaching that it is known and old in the art to utilize two cross straps, particularly a top cross strap and a bottom cross strap, rather than a single, unitary strap member in order to provide a greater degree of adjustability to the device as well as making the device more inexpensive to manufacture as this modification would reduce the amount of material required since, all of which making the overall device more versatile. Modification of Estwanik by Klotz does not change or



destroy the function or intended use of the Estwanik device, but merely provides an obvious improvement. Applicant refers to the rejection as "piecemeal" which is not understood since the only difference between Estwanik and claim 1 is to split strap 34 into two pieces resulting in a top cross strap and a bottom cross strap. This is the only difference and is merely a slight modification that does not affect the purpose of any element.

Finally, in response to applicant's argument that the devices of Estwanik and Klotz have distinct purposes, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). It is not clear how much weight can be given the arguments that Estwanik and Klotz "transfer forces to the user in different ways and to achieve different results" because there is no claim language to clearly define these features over Estwanik and Klotz.

20. Regarding claim 10, Givler discloses a hand piece that is "sized and contoured to accommodate the palmer surface of the hand" (column 5, lines 40-42), which therefore comprehends Applicant's 'clench strap', and it is shown to be gripped in Figure 3. The disclosure by Givler of the hand piece being contoured to accommodate the palmer surface comprehends Applicant's broad recitation of a *conformable* grip, as the word

conform is defined by Merriam-Webster as “to give the same shape, outline, or **contour** to.”

Additionally, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Givler does not specifically recite the hand piece as being flexible but merely discloses it as being contoured to accommodate the palmer surface. A flexible hand piece would undoubtedly make it contoured to accommodate a user's grip, therefore providing desirability and expectation of success for this combination. The Estwanik reference merely provides a general teaching of using a flexible clench strap or gripping member, and this modification does not in any way change the use of the Givler device.


Finally, the structure of Givler modified by Estwanik fully meets the recited structure of claim 10 and is capable of being used as a physical training device.

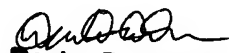
Art Unit: 3764

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allana Lewin whose telephone number is 571-272-5560. The examiner can normally be reached on Monday-Friday, 8AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AL   
3/15/2006

  
Danton D. DeMille  
Primary Examiner